

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name CONTRERAS GILBERT
 (Last) (First) (Initial)

Prisoner Number E-59058

Institutional Address P.O. BOX 689 DW-243 UPPER

SOLEDAD, CA. 93960-0689

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

GILBERT CONTRERAS

(Enter the full name of plaintiff in this action.)

vs.

B. CURRY, WARDEN (ACTING)

(Enter the full name of respondent(s) or jailor in this action)

Case No. _____
 (To be provided by the clerk of court)

**PETITION FOR A WRIT
 OF HABEAS CORPUS**

Read Comments Carefully Before Filling In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainees), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition?

(a) Name and location of court that imposed sentence (for example, Alameda **Prison Discipline**
Loss of Good Time Credits)

County Superior Court, Oakland):

Superior Court

Los Angeles

Court

Location

(b) Case number, if known BA151381

(c) Date and terms of sentence Fourteen Years

(d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) Yes X No

Where?

Name of Institution: Soledad State Prison, CTF-Central

Address: P.O. Box 689, Soledad, CA. 93960

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

Possession for Sales of a Controlled Substance

Health and Safty Code 11351

3. Did you have any of the following?

Arraignment: Yes X No

Preliminary Hearing: Yes X No

Motion to Suppress: Yes _____ No x

4. How did you plead?

Guilty X Not Guilty _____ Nolo Contendere _____

Any other plea (specify) _____

5. If you went to trial, what kind of trial did you have? **Plea Bargain**

Jury _____ Judge alone _____ Judge alone on a transcript _____

6. Did you testify at your trial? Yes _____ No _____

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes X No

(b) Preliminary hearing Yes _____ No _____

(c) Time of plea Yes X No _____

(d) Trial Yes _____ No _____

(e) Sentencing Yes X No

(f) Appeal Yes _____ No _____

(g) Other post-conviction proceeding Yes _____ No _____

8. Did you appeal your conviction? Yes _____ No X

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes _____ No _____

Year: _____ Result: _____

Supreme Court of California Yes _____ No _____

Year: _____ Result: _____

Any other court: Yes _____ No _____

Year: _____ Result: _____

(b) If you appealed, were the grounds the same as those that you are raising in this

petition? Yes _____ No _____

(c) Was there an opinion? Yes _____ No _____

(d) Did you seek permission to file a late appeal under Rule 31(a)?
Yes _____ No _____

If you did, give the name of the court and the result:

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes _____ No _____

[Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28

U.S.C. §§ 2244(b).] Prison Discipline, Loss of Good Time Credits.

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court: Superior Court, Monterey County

Type of Proceeding: Habeas Corpus

Grounds raised (Be brief but specific):

a. Denied a Federally protected liberty interest

b. _____

c. _____

d. _____

Result: Denied Date of Result: 10/23/06

II. Name of Court: Court of Appeal, Sixth Appellate District

Type of Proceeding: Habeas Corpus

Grounds raised (Be brief but specific):

a. Denied a Federally protected liberty interest

b. _____

c. _____

d. _____

Result: Denied Date of Result: 02/20/07

III. Name of Court: Superior Court of California

Type of Proceeding: Habeas Corpus

Grounds raised (Be brief but specific):

a. Denied a Federally protected liberty interest

b. _____

c. _____

d. _____

Result: Denied Date of Result: 04/11/07

IV. Name of Court: _____

Type of Proceeding: _____

Grounds raised (Be brief but specific):

a. _____

b. _____

c. _____

d. _____

Result: _____ Date of Result: _____

(b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

Yes _____ No X

Name and location of court: _____

B. GROUNDS FOR RELIEF

State briefly every reason that you believe you are being confined unlawfully. Give facts to support each claim. For example, what legal right or privilege were you denied? What happened?

Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One Denied a federally protected interest, (Loss of 360 days
6 credits) in violation of Fourteenth Amendment.

7 Supporting Facts: See the following pages.
8 _____
9 _____
10 _____

11 Claim Two: _____
12 _____

13 Supporting Facts: _____
14 _____
15 _____
16 _____

17 Claim Three: _____
18 _____

19 Supporting Facts: _____
20 _____
21 _____
22 _____

23 If any of these grounds was not previously presented to any other court, state briefly which
24 grounds were not presented and why:
25 _____
26 _____
27 _____
28 _____

1 On November 10, 2004, A Facility, including building A3
2 was searched for contraband. Petitioner's cell, A3-212up,
3 was subsequently searched by C/O Magdaleno. Pursuant to this
4 search, C/O Magdaleno found a weapon hidden in the mattress
5 that was assigned to petitioner's cell and bed area.

6 Petitioner was charged with Possession of Inmate Manufactured
7 Weapon. (Attached as Exhibit A is a copy of the CDC 115 Rule
8 Violation Report, see page 1 of 4). Due to the seriousness
9 of the rule violation, petitioner was immediately rehoused
10 in the Administrative Segregation housing (Ad. Seg.) unit, in
11 A5-237, pending a CDC 115 hearing. No referral was made to
12 the District Attorney regarding this matter due to insuffic-
13 ient data. (See Exhibit A, page 4, District Attorney Referral
14 Status Report).

15 On November 20, 2004, an Investigative Employee (IE) was
16 assigned to petitioner's case prior to the CDC 115 hearing.
17 The IE interviewed and included petitioner's statments in
18 his report (Attached as Exhibit B is a copy of the Invest-
19 igative Employee's Report). The petitioner stated, in revelant
20 part, the following in the IE's report: Petitioner lived in
21 cell A3-223 prior to beng moved into cell A3-212up; petitioner
22 only lived in cell A3-212up for about 9 to 10 days before it
23 was searched on November 10, 2004; petitioner does not dispute
24 that a weapon was found inside the mattress assigned to him,
25 but denies any knowledge and/or ownership of said weapon;
26 petitioner did not request the cell move, but rather, the move
27 was imposed upon him by order of C/O Delira; that before
28 moving into cell A3-212up, petitioner asked C/O Delira if

1 he could take his mattress from cell A3-223 to cell A3-212up
2 and C/O Delira said, "No"; when the weapon was found, petit-
3 tioner's request for it to be fingerprinted was denied;
4 petitioner further stated that the search began in his building
5 at about 2:30pm, and that he was aware that all mattresses
6 were being X-Rayed 5 hours in advance to his cell being searched
7 at 7:30pm; and, petitioner had ample time to get rid of any
8 known contraband. These statements by the petitioner reflect-
9 ed in the IE's report were never contested at petitioner's
10 CDC 115 hearing and disposition. (See Exhibit A, pages 1-3,
11 petitioner's CDC 115 hearing and disposition). Although
12 staff witnesses were requested at the hearing, none appeared
13 in dispute of petitioner's statements. (Exhibit B, page 3).

14 On December 7, 2004, petitioner's CDC 115 was convened.
15 Petitioner plead not guilty, but was found guilty by the Senior
16 Hearing Officer (SHO) based upon C/O Magdaleno's Rule Violation
17 Report (RVR) and the CDC 837 Crime/Incident Report. Petitioner
18 was assessed 360 days forfeiture of behavior credits and
19 served approximately 8 months in a Segregated Housing Unit
20 (SHU). The reports submitted to the SHO at petitioner's CDC
21 115 hearing reflect that the weapon found in petitioner's
22 assigned mattress was a 5" by 1/8" metal rod. Additionally,
23 two other weapons were found in mattresses assigned to cell
24 A3-101 and cell A3-136 the day petitioner's building was
25 searched. (See Exhibit A, page 2).

26 Petitioner appealed the guilty findings by the Senior
27 Hearing Officer by raising five claims for relief. (Attached
28 as Exhibit C is the Director's Level Appeal Decision,

1 see page 1, part I). Petitioner's claims were originally
2 reviewed and denied at the Second Level. (Exhibit C, page 1,
3 part II Second Level Decision.) The Second Level Reviewer
4 affirms that petitioner was moved into cell A3-212up on
5 October 28, 2004, and he only lived in that cell for 14
6 days prior to the incident. Additionally, the Second Level
7 Reviewer affirms that cell A3-212up was not searched by
8 staff prior to the petitioner being moved into that cell.
9 (See Exhibit C, page 1, part II, claims 3 and 4).

10 Petitioner appealed the Second Level Decision to the
11 Director's Level. (Exhibit C, page 2, part III A). The
12 Director's Examiner concedes that cell A3-212up was not
13 searched by staff prior to petitioner being housed into
14 that cell. The Examiner relies on his interpretation of
15 CCR, Title 15, section 3287(a) in support of petitioner's
16 guilty finding. Section 3287(a) is the provision that
17 mandates staff to search unoccupied cells and bed areas for
18 contraband prior to assigning a new inmate into that
19 location. The Examiner purports that section 3287(a) only
20 mandates that staff search segregation, isolation and (SHU)
21 cells for contraband prior to a new inmate's assignment to
22 the cell. The Examiner excludes general population cells
23 and bed areas from the section 3287(a) mandate in his
24 interpretation. The Examiner cites section 3287(a) in full,
25 and, contacts Centinela State Prison to confirm the housing
26 status of petitioner in building A3 at the time of the
27 incident. (Exhibit C, page 2, part III A).

28 Petitioner has exhausted all available administrative

1 remedies. (Exhibit C, parg 2, part III C).

2 On or about June 17, 2005, petitioner filed a habeas
3 petition rasing one ground for relief that petitioner has
4 been deprived of a protected liberty interest in violation
5 of the Fourteenth Amendment of the United States
6 Constitution.

7 On July 5, 2006, the Superior Court issued an order
8 that the respondent prepare an informal response to the
9 petitioner. After which, the petitioner had 15 days to
10 file a reply to respondent's informal response.

11 On August 21, 2006, the respondent filed its informal
12 response alleging that petitioner was properly found guilty
13 of Possession of Inmate Manufactured Weapon. Respondent
14 asserted that petitioner's due process rights regarding
15 his disciplinary hearing were satisfied. In his contention
16 the resposndent relied primarily on the opinion set forth
17 by the Court of Appeal, Fourth Appellate District, in the
18 case of In re Zepeda. (August 16, 2006 DJDAR 10742; [http.
19 www.courtinfo ca. gov/opinions/documets/D047776. PDF.](http://www.courtinfo.ca.gov/opinions/documents/D047776.PDF))
20 Respondent further maintained its position that Section
21 3287(a) of the California Code of Regulations does not
22 apply to general population cells.

23 On August 29, 2006, petitioner filed his reply to
24 respondent's informal response. Petitioner pointed out
25 that respondent's reliance on the ZEPEDA opinion is mis-
26 placed due to the fact that the search requirement of
27 section 3287(a) was never an issue raised in the ZEPEDA
28 case. Petitioner's factual circumstances are distinctly

1 different from ZEPEDA in this regard.

2 On October 23, 2006, the Superior Court denied the
3 petition on the merits. Based on the ZEPEDA opinion, the
4 court believed it had no authority under the Constitution
5 to reverse the guilty finding adduced at petitioner's
6 disciplinary hearing. (Attached as Exhibit D is a copy of
7 the order issued by the Superior Court denying the petition).

8 Petitioner filed another habeas petition into the
9 Court of Appeal, Sixth Appellate District, raising the same
10 ground for relief. On February 20, 2007, the Court of
11 Appeal summarily denied the petition. (See Exhibit D,
12 page 6 of 7).

13 On or about March 2, 2007, petitioner filed a habeas
14 petition on the same ground for relief into the California
15 Supreme Court. Petitioner asserted that he was not
16 alleging that his right to due process was infringed upon
17 at or during his disciplinary hearing. Rather, petitioner's
18 contention is that prior to any hearing he was denied due
19 process of law and equal protection guaranteed by the
20 Constitution when Correctional Officials failed to search
21 his prospective housing area pursuant to Section 3287(a)
22 of the California Code of Regulations. Specifically,
23 Section 3287(a) is a state-created liberty interest that is
24 federally protected under the Fourteenth Amendment of the
25 United States Constitution. Due to Correctional Officials
26 admitted omission, petitioner was arbitrarily denied the
27 protections provided by Section 3287(a) which resulted in
28 the loss of 360 days of good time credits.

1 On April 11, 2007, the California Supreme Court
2 summarily denied the petition. (See Exhibit D, page 7 of 7).

3 ////
4 ////

1 List, by name and citation only, any cases that you think are close factually to yours so that they
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
3 of these cases:

4 Hewitt V. Helms, 459 U.S. 460, 466 (1983); Valdez V. Rosenbaum, 302 F.3d
5 1039, 1044 (9th Cir. 2002); Kentucky Dpet. of Corrections V. Thompson, 490
6 U.S. 454, 462-63 (1989); Toussaint V. McCarthy, 801 F.2d 1080 (9th Cir. 1986).

7 Do you have an attorney for this petition? Yes____ Nox____

8 If you do, give the name and address of your attorney:
9 _____

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12
13 Executed on 5-7-07

14 Date

Gilbert R Contreras

Signature of Petitioner

15
16
17
18
19
20 (Rev. 6/02)

EXHIBIT

A

21)

304 TO RECORDS ON: 12/14/04BY: EC

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

RULES VIOLATION REPORT **A5-237**

CDC NUMBER 359053	INMATE'S NAME CONTRERAS	RELEASE/BOARD DATE 03/23/09	INST. QUINTANA	HOUSING NO. A3-212	LOG NO. PA-04-11-03
VIOLATED RULE NO(S) 202 3006(a)		SPECIFIC ACTS POSSESSION OF INMATE MANUFACTURED WEAPON	LOCATION WAC. A BLD. 3	DATE 11/10/04	TIME 2145 HOURS

CIRCUMSTANCES

On Wednesday, November 10, 2004, the Investigative Services Unit (ISU) reported to Facility 'A' to assist yard staff searching the Facility 'A' Law Library and building A3. Upon completion of searching the library, I reported to A3 to assist yard staff. Upon my arrival to A3, I was informed that all mattresses were being sent to Receiving and Releasing (RR) for X-rays all mattresses with contraband inside were set aside for searching. At approximately 2145 hours, I searched a mattress belonging to inmate CONTRERAS, 359053, A3-212. The mattress had inmate CONTRERAS' name, CDC number and bed number written on it. I called for CONTRERAS to be present during the search. I cut the mattress in the marked area, and discovered a piece of round metal stock measuring approximately 5" in length and 1/3" in diameter, sharpened in one end and masking tape on the other end as handle. Utilizing a Fuji S 7000 digital camera, I photographed the weapon, the mattress and inmate CONTRERAS. I placed the weapon and a piece of cloth containing the inmate's name, CDC number and cell number in an evidence envelope. I maintained sole possession of the evidence bag containing the aforementioned items, I placed the evidence bag in evidence locker C-10 located in the institutional evidence room. I downloaded the photographs into the ISU photograph archive file.

Inmate CONTRERAS is aware of this report. Inmate CONTRERAS is not a participant in the Mental Health Services Delivery System at the CCMS/BOP/MCB Level of care.

REPORTING EMPLOYEE (Typed Name and Signature) J. MAGDALENO, Correctional Officer	DATE 11/17/04	ASSIGNMENT SEC. SQUAD #3	RDC'S S/SU/H
REVIEWING SUPERVISOR'S SIGNATURE M. RODRIGUEZ, Sergeant	DATE 11/17/04	<input type="checkbox"/> INMATE SEGREGATED PENDING HEARING	
CLASSIFIED <input type="checkbox"/> ADMINISTRATIVE <input checked="" type="checkbox"/> SERIOUS	OFFENSE DIVISION: A	DATE 11/17/04	CLASSIFIED BY (Typed Name and Signature) M. SANDERS, Correctional Captain
HEARING REFERRED TO <input type="checkbox"/> HO <input checked="" type="checkbox"/> SHO <input type="checkbox"/> SC <input type="checkbox"/> FC			

COPIES GIVEN INMATE BEFORE HEARING

<input checked="" type="checkbox"/> CDC 115	BY: (STAFF'S SIGNATURE) C. K...	DATE 11/18/04	TIME 2000	TITLE OF SUPPLEMENT
<input checked="" type="checkbox"/> INCIDENT REPORT LOG NUMBER 92-8379	BY: (STAFF'S SIGNATURE) C. K...	DATE 11/18/04	TIME 2000	BY: (STAFF'S SIGNATURE) C. K...
HEARING		DATE	TIME	

This hearing convened on 12/7/04, at 1000 hours, I introduced myself to Inmate CONTRERAS as the Senior Hearing Officer, Lt. B.E. DAUBENSPECK. This Inmate is not a participant in the Mental Health Services Delivery System at the CCMS/BOP/MCB level of care, Inmate was not assigned a Staff Assistant. Inmate CONTRERAS stated that his health was good, hearing/vision is not impaired. Inmate CONTRERAS acknowledged receipt of this CDC-115 RVR, and the following associated documents: CDC-115A, CDC-115 PART C, INVESTIGATIVE EMPLOYEE'S REPORT, 837-CRIME/INCIDENT REPORT, more than twenty four (24) hours prior to the start of this hearing. These reports as well as the disciplinary charge of POSSESSION OF INMATE MANUFACTURED WEAPON were reviewed with Inmate CONTRERAS at this hearing. Inmate CONTRERAS stated that he understood all documentation and was prepared to begin.

DISTRICT ATTORNEY: This matter was referred for felony prosecution on 11/18/04, Inmate CONTRERAS did not request this hearing be postponed pending outcome of the referral.

DUE PROCESS: This disciplinary was served on Inmate CONTRERAS within 15 days of discovery and the hearing was held within 30 days of service. Time constraints have been met. There are no due process issues.

(Continued on CDC-115 part C)

REFERRED TO ☐ CLASSIFICATION ☐ BPT/NAEA

ACTION BY: (TYPED NAME) Lt. B.E. DAUBENSPECK, Senior Hearing Officer	SIGNATURE Lt. B.E. DAUBENSPECK	DATE	TIME
REVIEWED BY: (SIGNATURE) M.C. SANDERS, Facility 'A' Captain	DATE 12/14/04	CHIEF DISCIPLINARY OFFICER'S SIGNATURE R. HUSCH, Chief Disciplinary Officer	DATE 12/14/04
COPY OF CDC 115 GIVEN INMATE AFTER HEARING C. K...		BY: (STAFF'S SIGNATURE) C. K...	DATE 12/14/04

22)

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

RULES VIOLATION REPORT - PART C

PAGE 1 OF 2

CDC NUMBER E-59058	INMATE'S NAME CONTRERAS	LOG NUMBER FA-04-11-030	INSTITUTION CENTINELA	TODAY'S DATE 12/7/04
<input type="checkbox"/> SUPPLEMENTAL	<input type="checkbox"/> CONTINUATION OF:	<input type="checkbox"/> 115 CIRCUMSTANCES	<input checked="" type="checkbox"/> HEARING	<input type="checkbox"/> IE REPORT
<input type="checkbox"/> OTHER				

STAFF ASSISTANT: Was not assigned. Inmate CONTRERAS is not illiterate, claims 11th GRADE GEL, can read and write, is English speaking, the issues are not complex, is not a participant in the Mental Health Services Delivery System, and did not require a confidential relationship in preparing his defense.

INVESTIGATIVE EMPLOYEE: Was assigned, the issues are not complex, the inmate's housing status did preclude his gathering evidence; additional information was not necessary for a fair hearing. Inmate CONTRERAS received a copy of the I.E. Report and had no objections to the report.

PLEA: Inmate CONTRERAS plead **NOT GUILTY**, and gave the following testimony as his defense: "I have been in this cell for 8 to 9 days.

WITNESSES: Inmate CONTRERAS waived requested witnesses, and signed CDC-115 Part C.

FINDINGS: Inmate CONTRERAS was found **GUILTY** of violating CCR Section 3006(a), a Division "A1" offense; the specific charge of **POSSESSION OF INMATE MANUFACTURED WEAPON**. The preponderance of evidence submitted and considered in reaching a finding substantiates the charge and supports the factors in aggravation. The finding is based upon the following:

The RVR by: C/O, J. Magdaleno, stating in part, On 11/10/04, The Investigative Services Unit (ISU) reported to Facility "A" to assist Yard Staff searching the Facility "A" Law Library and Building A3. Upon completion of searching the library, I reported to A3 to assist Yard Staff. Upon my arrival to A3, I was informed that all mattresses were being sent to R&R for X-Rays, all mattresses with contraband inside were set aside for searching. At approximately 2145 hours, I searched a mattress belonging to Inmate CONTRERAS, E-59058, A3-212. The mattress had Inmate CONTRERAS name, CDC number and bed number written on it. I called for CONTRERAS to be present during the search. I cut the mattress in the marked area, and discovered a piece of round metal stock measuring approximately 5" in length and 1/3" in diameter, sharpened in one end and masking tape on the other end as handle. Utilizing a Fujifilm 7000 digital camera, I photographed the weapon, the mattress and Inmate CONTRERAS. I placed the weapon and a piece of cloth containing the Inmate's name, CDC number and cell number in an evidence envelope. I maintained sole possession of the evidence bag containing the aforementioned items, I placed the evidence bag in evidence locker C-10 located in the Institutional evidence room. I downloaded the photographs into the ISU photograph archive file.

The CDC-837 Crime/Incident Report Log # CEN-PA3-04-12-0379, which states by LT. C.L. PARKS: On 11/10/04, at approximately 2120 hours, during cell searches in Housing Unit A3 stabbing type weapons were discovered in Cells A3/101U, 136U and 212U. Cell 101 occupied by Inmate GOMEZ, P-15134, Cell 136, Inmate EDWARDS, K-56217, Cell 212 Inmate CONTRERAS, E-59058. Circumstances are as follows: On 11/10/04, Investigative Services Officers, J. Magdaleno ISU #4, and Y. Salazar ISU #2, reported to Facility "A" Housing Unit, as a part of the search team conducting searches for contraband on "A" Yard. Upon arrival they were informed that mattresses from all cells were being sent to R&R for X-Rays. All mattresses prior to leaving the cells were marked with the assigned Inmates Bunk, Name and CDC Number, to insure accountability of any suspected contraband discovered. At approximately 2200 hours, C/O, Magdaleno searched a mattress that was marked with Inmate CONTRERAS, E-59058, A3-212. Inmate CONTRERAS was escorted to the search area and observed C/O Magdaleno cut open the mattress and discovered within the mattress a piece of round metal stock measuring approximately 5" inches in length and 1/8" in diameter. It was sharpened on one end with masking tape wrapped on the other end in the shape of a handle. Utilizing a Fujifilm 7000 Digital Camera, C/O, Magdaleno photographed the weapon. He secured it in an evidence envelope and maintained possession of it.

SIGNATURE OF WRITER LT. B.E. DAUBENSPECK SENIOR HEARING OFFICER		DATE SIGNED 12/7/04	
GIVEN BY: (Staff's Signature) <i>[Signature]</i>		DATE SIGNED 12/7/04	TIME SIGNED 1530
<input checked="" type="checkbox"/> COPY OF CDC 115-C GIVEN TO INMATE			

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STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

RULES VIOLATION REPORT - PART C

PAGE 2 OF 2

CDC NUMBER E-59058	INMATE'S NAME CONTRERAS	LOG NUMBER FA-04-11-030	INSTITUTION CENTINELA	TODAY'S DATE 12/7/04
<input type="checkbox"/> SUPPLEMENTAL <input type="checkbox"/> CONTINUATION OF: <input type="checkbox"/> 115 CIRCUMSTANCES <input checked="" type="checkbox"/> HEARING <input type="checkbox"/> IE REPORT <input type="checkbox"/> OTHER				

Supplemental Report to the CDC-837, Log # ~~CEN-FA3-04-12-0379~~, which states by C/O, J. Magdaleno: On 11/10/04, The Investigative Services Unit (ISU) reported to Facility "A" to assist Yard Staff searching the Facility "A" Law Library and Building A3. Upon completed searching of the Library, I reported to A3 to assist Yard Staff. Upon my arrival I was informed that all mattresses were being sent to ROR for X-Rays, all mattresses with contraband inside were set aside for searching. At approximately 2145 hours, I searched a mattress belonging to Inmate CONTRERAS, E-59058, A3-212. The mattress had Inmate CONTRERAS name, CDC number and bed number written on it. I called for CONTRERAS to be present during the search. I cut the mattress in the marked area, and discovered a piece of round metal stock measuring approximately 5" in length and 1/3" in diameter, sharpened in one end and masking tape on the other end as handle. Utilizing a Fuji s 7000 digital camera, I photographed the weapon, the mattress and Inmate CONTRERAS. I placed the weapon and a piece of cloth containing the Inmate's name, CDC number and cell number in an evidence envelope.

WAS THIS MATTRESS FROM Bottom Bunk(L) OR Top Bunk (U) ?

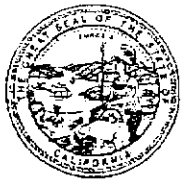
DISPOSITION: Assessed 360 days forfeiture of behavioral credits consistent with a Division "A1" offense. POSSESSION OF INMATE MANUFACTURED WEAPON.

Referred to ICC for Program Review. / Consideration of a SHU Term.

Inmate CONTRERAS was informed that the disposition of this Rules Violation Report would not become final until reviewed and approved by the Chief Disciplinary Officer. Inmate CONTRERAS was informed that he would receive a final copy upon approval of the Chief Disciplinary Officer. Inmate CONTRERAS was advised of his right to appeal the findings of this hearing, and that the first level of appeal has been eliminated on disciplinary issues. Inmate CONTRERAS was informed that Division A, B, and C credit losses are not restorable.

Lt. B.E. DAUBESPECK, Senior Hearing Officer

SIGNATURE OF WRITER		DATE SIGNED 12/7/04	
<input checked="" type="checkbox"/> COPY OF CDC 115-C GIVEN TO INMATE	GIVEN BY: (Staff's Signature) <i>[Signature]</i>	DATE SIGNED 12/7/04	TIME SIGNED 15:00



Centinela
STATE PRISON
INVESTIGATIVE SERVICES UNIT



DISTRICT ATTORNEY REFERRAL STATUS REPORT
IMPERIAL COUNTY DISTRICT ATTORNEY

#5-237

Date: 12/16/04Incident Report (IR) Number: CEA-PA3-04-11-0379Date I.R. Received: 12/03/04Incident Report Title: P.C. 4502 (A)Report Dated: 11/10/04Inmate Name & CDC Number: CONTRERAS, Gilbert, E-35058

The above case was evaluated for referral to the Imperial County District Attorney and the following decision was made:

- ☐ (A) Report returned to involved staff for more data.
- ☐ (B) Investigation being conducted by the Investigative Services Unit.
- ☒ (C) No referral to the District Attorney will be made due to:

- ☐ (1) There was no significant injury.
- ☐ (2) Potential for injury existed, but victim/witness will not testify.
- ☒ (3) Prima facie evidence exists, but there is insufficient data for other than an administrative action.
- ☐ (4) Insufficient quantity of drugs for prosecution.
- ☐ (5) Incomplete chain of evidence.
- ☐ (6) Inmate has an extended sentence and the most appropriate resolution will be effected via administrative disposition.
- ☐ (7) Non referable offense.
- ☐ (8) Does not meet criteria of agreement with D.A.
- ☐ (9) Factually unfounded.
- ☐ (10) Lack of Probable Cause.
- ☐ (11) Other: _____

- ☐ (a) On ___/___/___, this case was *referred* to the Imperial County District Attorney.
- ☐ (b) On ___/___/___, the Investigative Services Unit received written notice that the Imperial County District Attorney *reject/dismissed* this case for prosecution.
- ☐ (c) On ___/___/___, the Investigative Services Unit received written notice that the Imperial County District Attorney *accepted* this case for prosecution.
- ☒ (d) Any pending disciplinary action should be completed at this time and a closure report forwarded to the Associate Warden-Housing for distribution.

The above is pursuant to California Code of Regulations, Title 15, Section 3316, which allows for discretionary referral of criminal cases. Any questions may be addressed via the Investigative Services Unit, at extension 5510.

Investigative Services Unit
Centinela State Prison
cc:

ROUTING:

WHITE • 837 Incident Package • BLUE • Chief Deputy Warden • GREEN • Captain
PINK • Records (C-File) • GOLDENROD • Inmate

• CANARY • Facility Lieutenant

EXHIBIT

B

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

SERIOUS RULES VIOLATION REPORT

CDC NUMBER 859053	INMATE'S NAME CONTRERAS AS	VIOLATED RULE NO(S) CCR3303(a)	DATE 11/10/04	INSTITUTION CENTINELA	LOG NO. 9A-04-11-030
----------------------	-------------------------------	-----------------------------------	------------------	--------------------------	-------------------------

REFERRAL FOR FELONY PROSECUTION IS LIKELY IN THIS INCIDENT ☒ YES ☐ NO

POSTPONEMENT OF DISCIPLINARY HEARING

<input checked="" type="checkbox"/> I DO NOT REQUEST my hearing be postponed pending outcome of referral for prosecution.	INMATE'S SIGNATURE N/A	DATE 11-18-04
<input type="checkbox"/> I REQUEST my hearing be postponed pending outcome of referral for prosecution.	INMATE'S SIGNATURE N/A	DATE
DATE NOTICE OF OUTCOME RECEIVED	DISPOSITION N/A	
<input type="checkbox"/> I REVOKE my request for postponement.	INMATE'S SIGNATURE N/A	DATE N/A

STAFF ASSISTANT

<input type="checkbox"/> REQUESTED	<input type="checkbox"/> WAIVED BY INMATE	INMATE'S SIGNATURE N/A	DATE
<input type="checkbox"/> ASSIGNED	DATE	NAME OF STAFF	
<input type="checkbox"/> NOT ASSIGNED	REASON DOES NOT MEET THE CRITERIA PER CCR3315(1)(2)(A).		

INVESTIGATIVE EMPLOYEE

<input type="checkbox"/> REQUESTED	<input type="checkbox"/> WAIVED BY INMATE	INMATE'S SIGNATURE N/A	DATE 11/14/07
<input checked="" type="checkbox"/> ASSIGNED	DATE 11/14/07	NAME OF STAFF B. Pacrem	
<input type="checkbox"/> NOT ASSIGNED	REASON DOES NOT MEET THE CRITERIA PER CCR3315(1)(1)(A).		

EVIDENCE/INFORMATION REQUESTED BY INMATE:

WITNESSES

WITNESSES REQUESTED AT HEARING (IF NOT PRESENT, EXPLAIN IN FINDINGS)			
<input type="checkbox"/> REPORTING EMPLOYEE	<input type="checkbox"/> STAFF ASSISTANT	<input type="checkbox"/> INVESTIGATIVE EMPLOYEE	<input type="checkbox"/> OTHER <input type="checkbox"/> NONE
WITNESSES (GIVE NAME AND TITLE OR CDC NUMBER)	GRANTED	NOT GRANTED	WITNESSES (GIVE NAME AND TITLE OR CDC NUMBER)
	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	

INVESTIGATIVE REPORT: Investigative Employees must interview the inmate charged, the reporting employee, and any others who have significant information, documenting the testimony of each person interviewed. Review of files, procedures, and other documents may also be necessary.

I informed inmate CONTRERAS that I was assigned as the Investigative Employee. I explained to inmate CONTRERAS that my function was to gather information, question staff and inmates, screen witnesses, and/or complete and submit a written report to the Senior Hearing Officer. Inmate CONTRERAS stated that he understood my position as the Investigative Employee and DID NOT have any objections to my assignment.

INMATE STATEMENT: Inmate CONTRERAS, 859053, A5-237L, made the following statement;

"ON Wednesday, November 10, 2004, a search of all building A3 was conducted. In cell 212, the cell that I lived in, and inmate manufactured weapon was found in the mattress that was assigned to bunk 212 U which was the bunk that I was assigned to. I had no acknowledgment to it being there or to any weapons or contraband.

I had just been in that cell for about 9 or 10 days. I was asked by C/O Delira to move, that the Sergeant needed the cell. I told C/O Delira that I didn't want to move, I just did not feel right about moving and said it to C/O Delira. He told me that I would not be moved out of the building A3 (I had already been moved around 3 times in a month and a half) and for me to move to cell 212 and that for me to look for a person to call up with and that when he returned from his days off that he would move me (us) back to cell 223. That never happened. He told me to hold on, so I was stuck there and this happens.

I.E. 1430	Continued on	INVESTIGATOR'S SIGNATURE B. PACREM	DATE 11/18/04
<input type="checkbox"/> COPY OF CDC 115-A GIVEN INMATE	BY: (STAFF'S SIGNATURE) C. Pacrem	TIME 2000	DATE 11/18/04

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

RULES VIOLATION REPORT - PART C

PAGE ____ OF ____

DC NUMBER E59053	INMATE'S NAME (CONTRERAS) AS 237C	LOG NUMBER FA-04-11-030	INSTITUTION CENTINELA	TODAY'S DATE 11/20/04
<input type="checkbox"/> SUPPLEMENTAL	<input checked="" type="checkbox"/> CONTINUATION OF:	<input type="checkbox"/> 115 CIRCUMSTANCES	<input type="checkbox"/> HEARING	<input type="checkbox"/> IE REPORT
<input type="checkbox"/> OTHER				

Before moving to cell 212, I asked POLERA if I could take my mattress, he told me no and that there was one already in cell 212.

Upon getting to into cell 212 I did check the mattress but felt nothing. It's almost impossible to feel anything in the mattress. All mattresses were taken to X-rays. After my cell was searched, I was taken back to my cell. About 1 hour later I was taken back to dayroom. ISU Sergeant then tells me that X-rays shows that something is in the mattress assigned to me and if I knew what it was to let him know. I did not know, my answer was "I don't know."

The mattress was cut open where they had marked an X where the X-ray showed that something was there. As ISU cut and searched for contraband where they had marked an X, he could not find nothing. Digital camera was being used as he cut and searched. They had to call for the wand to be used to find contraband. As I said, it impossible to feel anything with one's hand in the mattress. Also, they did not find the contraband where the mark of X was, it was found on other side of there mark, how did it move?

* O...weapon found here
*
*
* T...x-ray shows here
*

I asked when weapon was found if it please not be handled and placed in evidence bag and checked for finger prints to prove that I never touched that weapon.

I was told that no print would be found because the cotton from mattress would have wiped clean. The incident report stated that weapon had masking tape as handle. I feel prints could be found on tape.

My cell, 212, was searched after the evening meal, approximately 7-7:30 PM. The search of bldg 3 started at approximately 2:30 PM. If I had any acknowledgment of any contraband, don't you think that I would have got rid of it. I had much time to do so. All inmates in A3 knew that mattresses were being X-rayed. "I knew nothing about no weapon or contraband." Can we see the film taken that day? I ask we do. I don't know inmate GONZALEZ, P15134. I know him a little now that we are called together. I don't know inmate EDWARDS, K56271, either.

REPORTING EMPLOYEE'S STATEMENT: J. MAGDALENO, SECURITY SQUAD #3, 2nd Watch, made the following statement; "On 11/10/04, I searched a mattress assigned to inmate CONTRERAS. Inside I discovered and recovered an inmate manufactured weapon."

I.F. issued 11-21-04

A.H. 11/15/04

B.Y. c/o [unclear]

<input type="checkbox"/> COPY OF CDC 115-C GIVEN TO INMATE	SIGNATURE OF WRITER B. PACRETA, Correctional Officer		DATE SIGNED
	GIVEN BY: (Staff's Signature)	DATE SIGNED	TIME SIGNED

8)

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

RULES VIOLATION REPORT - PART C

PAGE 2 OF 2

DOC NUMBER E59058	INMATE'S NAME CONTRERAS AS 237C	LOG NUMBER FA-04-11-030	INSTITUTION CENTINELA	TODAY'S DATE 11/20/04
<input type="checkbox"/> SUPPLEMENTAL	<input checked="" type="checkbox"/> CONTINUATION OF: <input type="checkbox"/> 115 CIRCUMSTANCES <input type="checkbox"/> HEARING <input checked="" type="checkbox"/> IE REPORT <input type="checkbox"/> OTHER			

STAFF WITNESS STATEMENT: NONE

INMATE WITNESS STATEMENT: NONE

INVESTIGATIVE EMPLOYEE'S STATEMENT: B. PACREM, Correctional Officer, made the following statement; "NONE"

STAFF WITNESSES REQUESTED AT HEARING MAGDALENO, C/O, ISU, S/S/H
DELIRA, A3 FLOOR OFF., F/S

INMATE WITNESSES REQUESTED AT HEARING NONE

REPORTING EMPLOYEE REQUESTED AT HEARING YES [X] NO []

INVESTIGATIVE EMPLOYEE REQUESTED AT HEARING YES [] NO [X]

ADDITIONAL INFORMATION CONTAINED IN CONFIDENTIAL REPORTS ... YES [] NO [X]

I.E. issued on: 11-21-04 At: 1410By: C/O MAGDALENO

WITNESSES WERE NOT AT HEARING
 LT. DAUBENSPECT MADE A PHONE CALL
 TO C/O DELIRA. IF I.E. REPORT WAS
 READ AND LOOKED OVER HE WOULD HAVE
 KNOWN THAT I WANTED THESE WITNESSES
 AT HEARING AND HAD ASKED ME IF
 I HAD ANY WITNESSES.

<input type="checkbox"/> COPY OF CDC 115-C GIVEN TO INMATE	SIGNATURE OF WRITER B. PACREM, Correctional Officer		DATE SIGNED
	GIVEN BY: (Staff's Signature)	DATE SIGNED	TIME SIGNED

EXHIBIT

C

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS
INMATE APPEALS BRANCH
P. O. BOX 942883
SACRAMENTO, CA 94283-0001

DIRECTOR'S LEVEL APPEAL DECISION

Date: **MAY 25 2005**

In re: Contreras, E-59058
Correctional Training Facility
P.O. Box 686
Soledad, CA 93960

IAB Case No.: 0408712

Local Log No.: CEN 04-01913

This matter was reviewed on behalf of the Director of the California Department of Corrections (CDC) by Appeals Examiner Rick Manuel, Facility Captain. All submitted documentation and supporting arguments of the parties have been considered.

I APPELLANT'S ARGUMENT: The appellant is submitting this appeal relative to CDC Form 115, Rules Violation Report (RVR), Log #FA-04-11-030, dated November 10, 2004, for Possession of an Inmate-Manufactured Weapon. It is the appellant's position that he was inappropriately found guilty of the RVR charge. The appellant denies the RVR charge, claiming that staff failed to investigate this matter. The appellant claims the following procedural errors: (1) The Senior Hearing Officer (SHO) did not read the Investigative Employee (IE) report; (2) The Reporting Employee (RE) did not find the weapon in the marked area of the mattress, rather the RE had to turn the mattress over prior to finding the weapon; (3) The appellant claims that he had only been assigned to cell #212 for nine or ten days, and had no knowledge of the weapon; (4) The appellant claims that his cell was not searched prior to him moving in; and (5) The SHO inappropriately disallowed the appellant to use the statement of his ex-cellmate. The appellant requests on appeal that the RVR be dismissed.

II SECOND LEVEL'S DECISION: The reviewer found that the appellant was appropriately found guilty of the RVR charge. The reviewer considered the appellant's concerns; however, determined that his explanation does not justify his request. The reviewer responded to each of the appellant's concerns: (1) As for the appellant's claim that the SHO did not read the IE report, the reviewer states that this is untrue. The reviewer points out that the SHO documents in the Finding section of the RVR that the SHO based his decision on the RVR, which contained the IE report and the CDC Form 837, Crime/Incident Report; (2) As for the appellant's claim that the RE did not find the weapon in the marked area, the reviewer states that this claim is untrue. The reviewer states that the RE clearly documents that he cut the mattress in the marked area and discovered a piece of round mental stock, sharpened at one end with a taped handle at the other end. The appellant further points out that there are no rules that would prevent the RE from turning the mattress over and cutting into it from the other side. The reviewer states that this issue is moot; (3) The reviewer affirms that the appellant had only been assigned to cell #212 since October 28, 2004. However, the reviewer reminds the appellant since he had been assigned to cell #212 for 14 days prior to the discovery of the inmate-manufactured weapon, the appellant had ample time to notice that his mattress had been tampered with and that he should have reported this to staff. In that he did not report this to staff, the inmate-manufactured weapon became his responsibility; (4) As for the appellant's claim that his cell was not searched prior to him being placed in it, the reviewer states that this claim is true. A review of the Housing Unit A-3 cell search logbook did not indicate that cell #212 had been searched prior to the appellant being assigned to the cell. However, the reviewer maintains that the appellant was in the cell for 14 days prior to the discovery of the contraband and had ample time to notice that his mattress had been tampered with and to notice staff. The reviewer finds this claim to be without merit; and (5) As for the appellant's claim that the SHO disallowed him to use the statement of an ex-cellmate, the reviewer states that this claim has no merit. The reviewer states that there is no record within the RVR indicating that the appellant presented any written evidence to the SHO for consideration. The reviewer points out that the appellant could have called the ex-cellmate as a witness at the hearing, but elected to waive his initial request to call a witness, as indicated on the related CDC Form 115-C. Despite the appellant's disagreement with the guilty finding, the reviewer concludes that

CONTRERAS, E-59058
CASE NO. 0408712
PAGE 2

he has failed to offer any new or compelling evidence that substantiates his claim. The appeal was denied at the Second Level of Review (SLR).

III DIRECTOR'S LEVEL DECISION: Appeal is denied.

A. **FINDINGS:** The documentation and arguments presented are persuasive that the appellant has failed to support his appeal issue with sufficient evidence or facts to warrant a modification of the SLR. There is no evidence that supports the appellant's contention that he was inappropriately found guilty. As for the appellant's claim that staff committed several procedural errors during the processing of the RVR, the examiner finds that the presented evidence clearly supports the guilt finding. As for the appellant's cell not being searched prior to him being assigned cell #212, the California Code of Regulations, Title 15, Section (CCR) 3287 states in part, "Insofar as possible, a cell, room, or dormitory bed area and locker will be thoroughly inspected immediately upon its vacancy and again, if there is a significant time lapse, before another inmate is assigned to the same cell, room or dormitory bed and locker. Such inspections are required and must be recorded for segregation, isolation and security housing unit cells. The purpose of such inspections is to fix responsibility or the absence of responsibility for security and safety hazards and serious contraband found in the cell, room or dormitory area." It is clear that this citation requires segregation cells, isolation cells, SHU cells must be searched prior to a new inmate being assigned the cell; however, the citation does not mandate that a general inmate population cell, room, or dormitory be searched prior to the assignment of a new inmate. On March 22, 2005, the examiner contacted staff at Centinela State Prison (CEN) and verified that Housing Unit A-3 is not an Administrative Segregation Unit, isolation building or a SHU. The examiner concurs that the appellant has failed to offer any new evidence that legitimately challenges the guilty finding. Relief at the Director's Level of Review is not warranted.

B. BASIS FOR THE DECISION:

CCR: 3001, 3006, 3270, 3287, 3315, 3320

C. ORDER: No changes or modifications are required by the institution.

This decision exhausts the administrative remedy available to the appellant within CDC.

T. Surges
4

N. GRANNIS, Chief
Inmate Appeals Branch

cc: Warden, CTF
Appeals Coordinator, CTF
Appeals Coordinator, CEN

EXHIBIT

D

FILED**OCT 23 2006****LISA M. GALDOS**
CLERK OF THE SUPERIOR COURT
K. Hanson DEPUTY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

In re) Case No.: HC 5350
 Gilbert Contreras (E-59058)) ORDER
 On Habeas Corpus.)

Petitioner brought the instant petition contending that his due process rights were violated by the CDCR's issuance of a Rules Violation Report against him and his subsequent loss of 360 days' credit. Specifically, Petitioner claimed that there was insufficient evidence upon which to find him guilty of being in possession of an inmate-manufactured weapon.

In the context of disciplinary hearings, due process requires that an inmate must receive: "(1) advance written notice of the disciplinary charges; (2) an opportunity, when consistent with institutional safety and correctional goals, to call witnesses and present documentary evidence in his defense; and (3) a written statement by the factfinder of the evidence relied on and the reasons for the disciplinary action." *Superintendent v. Hill* (1985) 472 U.S. 445, 454 (citation omitted). Due process is satisfied if there is "any evidence in the record tending to support the conclusion reached by the disciplinary board." *Id.* at 456.

Petitioner was charged and found guilty of a serious rule violation when his assigned mattress was found to contain an inmate manufactured weapon. Petitioner denies any knowledge of the weapon's existence. At the rule violation hearing, Petitioner explained that he had been moved from his cell approximately three times over a 6-week period. The fourth time he was asked to move, Petitioner objected. The correctional officer explained that the facility needed cell 223 where Petitioner was than-housed, and that the petitioner would temporarily be placed in cell 212. Petitioner sought to take his mattress from cell 223 to cell 212 but the officer declined.

1 stating that cell 212 already had a mattress. Prior to Petitioner's return to cell 223, cell 212 was
 2 searched and a weapon was found in the existing mattress.

3 At the Director's Level of review, a specific finding was made that general population
 4 cells, rooms and dorms are not required by law to be searched prior to the assignment of a new
 5 inmate, based upon his interpretation of 15 CCR sec. 3287.¹ In the officer's view, the
 6 responsibility for inspecting general population housing units rest with the inmate.

7 This Court disagreed. Section 3287 falls squarely within Article 2 of Title 15 of the
 8 California Code of Regulations. Article 2 is entitled "Security" and sets forth, *inter alia*, the
 9 general policy of the institution (training employees to effectively maintain prison safety and
 10 security); the responsibility of prison employees (provide for the safe custody of inmates); and
 11 employee inspections of cells, rooms and dorms. 15 CCR secs. 3270, 3271, 3287. Section 3287
 12 explains, in part:

13 "(a) Insofar as possible, a cell, room, or dormitory bed area and locker will be
 14 thoroughly inspected immediately upon its vacancy and again, if there is a significant
 15 time lapse, before another inmate is assigned to the same cell, room or dormitory bed and
 16 locker. Such inspections are required and must be recorded for segregation, isolation and
 security housing unit cells. The purpose of such inspections is to fix responsibility or the
 absence of responsibility for security and safety hazards and serious contraband found in
 the cell, room or dormitory area.

17 (1) Occupied cells, rooms and dormitory areas . . . will be inspected on an infrequent
 18 and unscheduled basis. . . .

19 (2) Cell and property inspections are necessary in order to detect and control serious
 20 contraband and to maintain institution security. Such inspections will not be used as a
 21 punitive measure nor to harass an inmate. Every reasonable precaution will be taken to
 avoid damage to personal property and to leave the inmate's quarters and property in
 good order upon completion of the inspection."

22 The intent of Section 3287, and indeed, all of Article 2, is that responsibility for ensuring prison
 23 safety will be borne by prison staff, and not the inmates. Thus, it is the facility's responsibility to
 24

25 ¹ Unless stated otherwise, all further references to "Section" refer to the California Code of Regulations.

1 inspect cells and items found within those cells for contraband, and not the inmate. Section 3287
2 does not limit the facility's responsibility to inspect only those cells which are outside of the
3 general population, it simply mandates that inspection of certain units within the facility be
4 performed and recorded. 15 CCR sec. 3287(a).

5 In denying Petitioner's administrative appeal, the reviewing officer concluded that
6 because Petitioner had been assigned to cell 212 several days prior to the inspection and
7 discovery, "the appellant had ample time to notice that his mattress had been tampered with and
8 . . . should have reported this to staff. In that he did not report this to staff, the inmate-
9 manufactured weapon became his responsibility." In this Court's view, given the facility's
10 general policy requiring employees to be trained to safeguard prison security, it would follow
11 that an officer's training and experience would better enable an officer than an inmate to discern
12 which areas within a cell to inspect in order to ensure prison safety. To hold otherwise would
13 conceivably lead to an inmate being charged with destruction of property when he seeks to
14 inspect his cell by removing air vent coverings, loose floor or ceiling tiles, or, as officials did
15 here, by cutting into his assigned mattress.

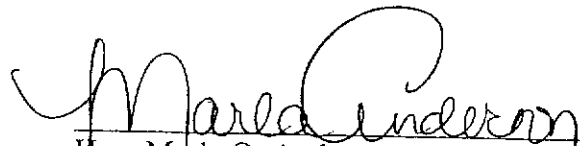
16 However, subsequent to the Court's interim order and request from Respondent for an
17 informal response to address the issues raised herein, the Appellate Court held that "due process
18 requirements imposed by the Constitution "do not authorize courts to reverse prison disciplinary
19 actions simply because, in the court's view, there is a realistic possibility the prisoner being
20 disciplined is not guilty of the charged infraction." *In re Zepeda* (August 14, 2006, D047776) __
21 Cal.App.4th __. There, as here, the evidence adduced at the petitioner's disciplinary hearing was
22 meager in the eyes of the Court. However, there is some evidence in the record to support the
23 findings of the hearing officer that Petitioner was in possession of a weapon. Accordingly, the
24 petition is now DENIED.

25 ///

1 IT IS SO ORDERED.

2 Dated:

OCT 23 2006

3
4 
5 Hon. Marla O. Anderson
6 Judge of the Superior Court
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CERTIFICATE OF MAILING

C.C.P. SEC. 1013a

I do hereby certify that I am not a party to the within stated cause and that on

OCT 23 2006

I deposited true and correct copies of the following document:

ORDER in sealed envelopes with postage thereon fully prepaid, in the mail at Salinas, California, directed to each of the following named persons at their respective addresses as hereinafter set forth:

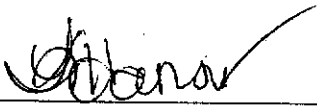
Gilbert Contreras (E-59058)
CTF-Soledad, DW-243L
P.O. Box 689
Soledad, CA 93960-0689

Office of the Attorney General
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102
Attn: Correctional Law Section

Pam Ham, DDA
Office of the District Attorney
240 Church St., Rm. 101
Salinas, CA 93901

Dated: **OCT 23 2006**

LISA M. GALDOS,
Clerk of the Court

By: 
Deputy K. Hanson

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

FILED
FEB 20 2007

FEB 20 2007

MICHAEL J. REPLY, Clerk

By _____ DEPUTY

In re GILBERT CONTRERAS,
on Habeas Corpus.

H031100
(Monterey County
Super. Ct. No. HC5350)

BY THE COURT:

The petition for writ of habeas corpus is denied.

(Premo, Acting P.J., Elia, J., and Duffy, J., participated in this decision.)

Dated FEB 20 2007 PREMO, J. Acting P.J.

S150892

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re GILBERT CONTRERAS on Habeas Corpus

The petition for writ of habeas corpus is denied.

George, C. J., was absent and did not participate.

SUPREME COURT
FILED

APR 11 2007

Frederick K. Ohlrich Clerk

Deputy

MORENO

Acting Chief Justice

PROOF OF SERVICE BY MAIL

BY PERSON IN STATE CUSTODY

(Fed. R. Civ. P. 5; 28 U.S.C. § 1746)

I, GILBERT CONTRERAS, declare:

I am over 18 years of age and a party to this action. I am a resident of MONTEREY COUNTY

CALIFORNIA TRAINING FACILITY - CENTRAL Prison,

in the county of MONTEREY

State of California. My prison address is: P.O. Box 689 DW-243 Upper, Soledad, Ca. 93960-0689

On _____
(DATE)

I served the attached: Petitioner for Writ of Habeas Corpus.

(DESCRIBE DOCUMENT)

on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope, with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named correctional

institution in which I am presently confined. The envelope was addressed as follows:

Clerk of the U.S. District Court
Northern District of California
450 Golden Gate Avenue Box 36060
San Francisco, Ca. 94102

Office of the Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, Ca. 94102-7004

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 5-7-07
(DATE)

Gilbert R. Contreras
(DECLARANT'S SIGNATURE)

Case Number: _____

CERTIFICATE OF FUNDS
IN
PRISONER'S ACCOUNT

I certify that attached is a true and correct copy of the
prisoner's trust account statement showing transactions of
Contreras, G. # E59058 for the last six months
(prisoner name)

at CORRECTIONAL TRAINING FACILITY-SOLEDAD where
(name of institution)

(s)he is confined.

I further certify that the average deposits each month to this
prisoner's account for the most recent 6-month period were
\$ 10.36 and the average balance in the prisoner's account
each month for the most recent 6-month period was \$ 18,891.67.

Dated: 6-15-07

R. Stealy
Authorized officer of the institution



THIS WITHIN INSTRUMENT IS A CORRECT
COPY OF THE TRUST ACCOUNT MAINTAINED
BY THIS OFFICE.
ATTEST:
CALIFORNIA DEPARTMENT OF CORRECTIONS
BY R. Stealy
TRUST OFFICE

REPORT ID: TS3030

REPORT DATE: 06/04/07

PAGE NO: 1

CALIFORNIA DEPARTMENT OF CORRECTIONS
CTF SOLEDAD/TRUST ACCOUNTING
INMATE TRUST ACCOUNTING SYSTEM
INMATE TRUST ACCOUNT STATEMENT

FOR THE PERIOD: DEC. 01, 2006 THRU JUN. 04, 2007

ACCOUNT NUMBER : E59058 BED/CELL NUMBER: CFDWT2000000243L
ACCOUNT NAME : CONTRERAS, GILBERT RAYMOND ACCOUNT TYPE: I
PRIVILEGE GROUP: B

TRUST ACCOUNT ACTIVITY

TRAN

DATE	CODE	DESCRIPTION	COMMENT	CHECK NUM	DEPOSITS	WITHDRAWALS	BALANCE
12/01/2006		BEGINNING BALANCE					25,822.03
12/08	W415	CASH WITHDRAW	1662 TWO	203431502		2,100.00	23,722.03
12/18	FC01	DRAW-FAC 1	1764 ML			90.00	23,632.03
ACTIVITY FOR 2007							
01/10	D300	CASH DEPOSIT	1996 8905		30.00		23,662.03
01/16	FC01	DRAW-FAC 1	2032 MAINL			90.00	23,572.03
01/24	W512	LEGAL POSTAGE	2147 LPOST			4.20	23,567.83
01/24	W512	LEGAL POSTAGE	2147 LPOST			1.59	23,566.24
02/13	FC01	DRAW-FAC 1	2353 M/L			90.00	23,476.24
02/20	W415	CASH WITHDRAW	2428 TWO	203432492		3,000.00	20,476.24
02/21	W415	CASH WITHDRAW	2461 NOV06	203432509		5,000.00	15,476.24
03/15	W512	LEGAL POSTAGE	2707 LPOST			5.60	15,470.64
03/19	FC01	DRAW-FAC 1	2737 ML			90.00	15,380.64
04/10	W389	DONATION - YO	3003PIONEER			345.25	15,035.39
04/11	W415	CASH WITHDRAW	3023 MARCH	203433388		500.00	14,535.39
04/13	W415	CASH WITHDRAW	3067 APR07	203433547		998.63	13,536.76
04/16	FC01	DRAW-FAC 1	3108 ML			90.00	13,446.76
04/19	W450	DONATION-VETE	3158 CINCO			64.85	13,381.91
05/05	W700	IWF SP SURCHA	3312 2QPKG			23.11	13,358.80
05/05	W350	SPECIAL PURCH	3312 2QPKG	203433720		231.10	13,127.70
05/09	W415	CASH WITHDRAW	3358 APR07	203433863		300.00	12,827.70
05/15	FC01	DRAW-FAC 1	3427 ML			90.00	12,737.70
05/24	W415	CASH WITHDRAW	3561 MAY07	203434053		194.38	12,543.32
05/25	W512	LEGAL POSTAGE	3564 LPOST			1.83	12,541.49
05/31	D200	CASH DEPOSIT-	3630 75930		32.13		12,573.62
05/31	W905	REVERSE IWF S	3630 75930			3.21	12,576.83

TRUST ACCOUNT SUMMARY

BEGINNING BALANCE	TOTAL DEPOSITS	TOTAL WITHDRAWALS	CURRENT BALANCE	HOLDS BALANCE	TRANSACTIONS TO BE POSTED
25,822.03	62.13	13,307.33	12,576.83	0.00	0.00

CURRENT
AVAILABLE
BALANCE

12,576.83



THE WITHIN INSTRUMENT IS A CORRECT
COPY OF THE TRUST ACCOUNT MAINTAINED
BY THIS OFFICE.
ATTEST:

CALIFORNIA DEPARTMENT OF CORRECTIONS

BY 
TRUST OFFICE

FEDERAL FILING FEES WORK SHEET

NAME: Contreras, G. CDC#: E59058 DATE: 6/4/07

DATES	AVERAGE DEPOSIT	AVERAGE BALANCE
12/06	0	24,155.58
1/07	30.00	24,412.08
2/07	0	21,121.95
3/07	0	15,435.43
4/07	0	14,135.51
5/07	32.13	14,089.46
TOTAL:	62.13 ÷ 6	113,350.01 ÷ 6
MONTHLY		
AVERAGE:	10.36	18,891.67

- 1) Deposits are based on total deposits after restitution deductions.
- 2) First and last months are combined to total 1 full month.